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FILE:



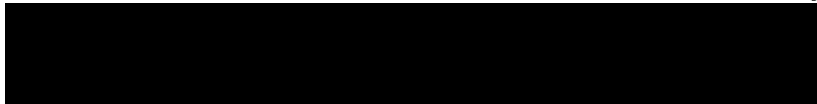
Office: MIAMI (WPB)

Date: FEB 17 2004

IN RE:

Petitioner:

Beneficiary:



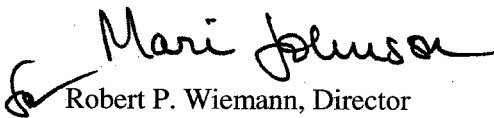
PETITION: Application for Advance Processing of an Orphan Petition Pursuant to 8 C.F.R.
204.3(c)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director of the Miami District Office denied the application for advance processing of an orphan petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant filed the Application for Advance Processing of Orphan Petitioner (Form I-600A) on January 23, 2003. The petitioner is a 36-year-old married citizen of the United States.

On August 26, 2003 the district director denied the application, finding that the applicant failed to submit sufficient documentation to establish that rehabilitation had occurred in light of the applicant's history of substance abuse.

On appeal, the applicant submitted a letter and documentation regarding the 1992 arrest and conviction for driving while impaired (fine of \$425.00 and terms of sentence completed); the 1995 arrest for driving under the influence and conviction for reckless driving (\$500.00 fine and DUI school completed); and the July 2002 arrest for possession of marijuana (20 grams or less), ordered nolle prosequi (substance abuse awareness program evaluation and 30 hours of community service completed).

According to 8 C.F.R. § 103.3(a)(2)(i), an affected party must file an appeal within 30 days of service of the decision. The regulations allow an additional three days for filing the appeal when service of the decision is accomplished by mail. 8 C.F.R. § 103.5a(b). The record reflects that the petitioner filed the appeal on November 20, 2003, more than 33 days after the decision was issued. The appeal was untimely filed and will be rejected.

We note that the district director properly instructed the applicant in his decision that an appeal must be filed within 33 days. The record reflects that the district director initially failed to include a copy of the Form I-290B Notice of Appeal with the decision, and the applicant did not receive the Form I-290B until the time for filing the appeal had lapsed. The regulations, however, do not allow CIS to extend the thirty-day appeal timeframe.

If an appeal is untimely, the appeal must be treated as a motion to reopen or reconsider if it meets the requirements of a motion to reopen or reconsider. 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

A motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion for reconsideration must state the reasons for reconsideration and be supported by any pertinent precedent decisions. 8 C.F.R. § 103.5(a)(3).

The official having jurisdiction over a motion to reopen or to reconsider is the official who made the last decision in the proceeding. 8 C.F.R. § 103.5(a)(1)(ii)

The district director should consider the evidence presented on appeal to determine whether it meets the requirements for reopening or reconsideration, and issue a decision accordingly.

ORDER: The appeal is rejected.